IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1996 of 2003

with

CROSS OBJECTION STAMP No.22 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EXECUTIVE ENGINEER

Versus

THAKORE BHIKHAJI MANAJI

Appearance:

1. First Appeal No. 1996 of 2003

MS SEJAL K MANDAVIA for Petitioner No. 1-2

MR AJ PATEL for Respondent No. 1-2

MR JITENDRA M PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

and

HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 16/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.P.BUCH)

The appellants above named have preferred this appeal u/s.54 of the Land Acquisition Act, 1854 (for short, "the Act") read with Section 96 of the Code of Civil Procedure, 1908 (for short, "the Code"), challenging the judgment and award dated 27/01/2000 passed by the Reference Court presided over by the learned 2nd Extra Assistant Judge, Ahmedabad (Rural) at Mirzapur in Land Acquisition Case No.779/1995, whereby the learned Judge of the Reference Court allowed the said reference and fixed the market price of the land acquired at Rs.80/- per square meter as additional price, over and above the compensation already awarded by the Land Acquisition Officer, appellant no.2 herein, with solatium and interest etc. as may be admissible on the said amount.

2. The facts of the case can be drawn from the judgment and award of the trial court placed at page 1 to the memo of appeal. It appears from the judgment of the Reference Court that land, Block No.27, situated at village Nabhoi in Gandhinagar Taluka of Gandhinagar District, was required to be acquired for the purpose of construction of Narmada Canal. Therefore, a proposal was made to the State Government for the aforesaid purpose. Accordingly, the State Government issued Notifications u/s.4(1) of the said Act on 08/01/91 and 16/01/91. Thereafter, a declaration u/s.6 of the Act was made by Notifications dated 03/05/91 and 30/05/91. After following due procedure, the Land Acquisition Officer passed an award on 30/04/92 u/s.11 of the said Act. Under the said award, the Land Acquisition Officer offered compensation at Rs.4.80/- per square meter to the present respondents. It may be noted that the claimants had claimed compensation at Rs.125/per square meter. Therefore, the respondents were not satisfied by the quantum of amount of compensation offered by the Land Acquisition Officer by way of award u/s.11 of the said Act. Therefore, the respondents claimants submitted an application to the Collector, Gandhinagar, for making reference to the Court for enhancement of compensation u/s.18 of the said Act. Accordingly, the Collector made a reference to the District Court, Ahmedabad (Rural) at Mirzapur u/s.18 of the said Act. There the case was

registered as Land Acquisition Case No.779/1995. It seems that Notice was issued to the appellants. Written statement was filed. Issues were framed and evidence was recorded. At the close of evidence, the learned Judge of the aforesaid Reference Court allowed the said reference partly and directed that the market price of the lands acquired as aforesaid be fixed at Rs.80/- per square meter, over and above the compensation already awarded by the Land Acquisition Officer (i.e. Rs.80/- + Rs.4.80/- = Rs.84.80/- per sq.meter).

3. The learned Judge further directed that the aforesaid amount of compensation shall be paid with solatium at 30% per annum and running interest at 9% per annum for the period of one year from the date of taking over possession of the acquired land and thereafter, at the rate of 15% per annum till the entire amount is fully paid or deposited.

4. The learned Judge further directed that the respondent claimants are also entitled to get interest at the rate of 12% per annum from the date of the publication of the Notification u/s.4(1) of the said Act to the date of award passed by the Land Acquisition Officer as provided u/s.23(1)(A) of the said Act.

5. Feeling aggrieved by the said judgment and award of the Reference Court, the appellants have preferred this appeal before this Court u/s.54 of the said Act read with Section 96 of the said Code.

6. It has been contended here by the appellants that the trial Court was not justified in enhancing the amount of compensation. That the Land Acquisition Officer was perfectly justified in awarding the amount of compensation as aforesaid. That the learned Judge has not properly appreciated the evidence on record. That, therefore, the judgment and award of the Reference Court are illegal and erroneous and deserve to be set aside. The appellants have, therefore, prayed that the present appeal be allowed and the judgment and award passed by the learned Judge presiding over the Reference Court be set aside.

7. On receiving the appeal, it was admitted and Notice was issued to the respondents. In response to the service of Notice on the claimants, Mr.A J Patel learned advocate has appeared on behalf of the respondent claimants, whereas Ms.Archana Raval learned AGP has appeared on behalf of the State.

7.1 It seems that even the respondents/claimants were also not satisfied with the judgment and award of the Reference Court, appealed against, and therefore, they have presented cross objections, which have been registered as Cross Objection No.22 of 2003. We have heard the learned advocates for the parties as well as the learned AGP with respect to the appeal as well as to the cross objections. The learned AGP has supported the arguments advanced by Ms.Sejal Mandavia, learned advocate for the appellants.

8. Ms.Sejal Mandavia, Mr.A J Patel as well as the learned AGP have argued the matter at length and they have taken us though the judgment and award of the trial Court, together with the documentary and oral evidence on record and certain decisions relating to the fixation of market value in respect of the land situated at village Nabhoi.

9. It is not much in dispute that the land in question is situated at village Nabhoi in Gandhinagar District. The said land is near highway. The said land was required for the purpose of construction of Narmada Canal and therefore, it was sought to be acquired. It was in fact acquired by the Land Acquisition Officer, who followed the procedure and declareded his award u/s.11 of the said Act.

10. Following facts emerge from the records and arguments;

(i) 08/01/91 and 16/01/91 - Notification u/s.4 of the Act.

(ii) 03/05/91 and 30/05/91 - Declaration made u/s.6 of the Act.

(iii) 30/04/92 - Award u/s.11 of the said Act.

(iv) 27/01/00 - Judgment and award of the reference Court u/s.18 of the said Act.

11. It is not much in dispute that the said Land Acquisition Officer had offered compensation at Rs.4.80/per sq.meter. It is also not much in dispute that the respondent claimants claimed compensation at Rs.125/- per sq.meter. It is also an admitted position

that the learned Judge of the Reference Court has enhanced the amount of compensation by Rs.80/- per sq.meter. The learned Judge has found that the said amount would be in addition to the market price at Rs.4.80/- per sq.meter fixed by the Land Acquisition Officer.

12. Ms.Sejal Mandavia learned advocate appearing for the appellants has argued at length that there was evidence before the trial court for fixing market price of the land in question and the trial court has totally ignored the oral and documentary evidence on record on this point. That the trial Court has committed an error in enhancing the amount of compensation in respect of the land acquired as aforesaid. On the other hand, Mr.A J Patel learned advocate for the respondents has argued that the Reference Court has awarded compensation less than what should have been awarded by it and therefore, the cross objection filed by the respondent may be allowed and the respondents may be awarded compensation in a higher amount i.e. at the rate of Rs.125/- per sq.meter.

13. In support of the said argument, Mr.A J Patel has taken us through the evidence of contesting respondent Bhikaji Manaji at Ex.24 recorded in Land Acquisition Case No.779/195. The respondent has deposed before the trial court that some developments have been made around the land acquired in the present matter. According to his evidence, Rajdhani Society, Farm House, Swan Club, Mahavir Jain Aradhana Club, Vrindavan Hotel, P.T.C. College, Mother Dairy, G.I.D.C., Kanoria Research Centre, Petrol Pump, Plasma Research Centre etc. are all constructed very near to the land in question. On the strength of the above evidence, Mr.A J Patel has submitted that looking to the fast development in the neighborhood of the land in question, the Reference Court ought to have awarded enhanced amount of compensation, and therefore, he has again argued that the cross objection filed by the respondent may be allowed and the appeal of the present appellants may be dismissed.

14. Now it is not much in dispute that the Notification u/s.4 of the said Act in the present case was issued in 1991. To be more precise, it was issued on 08/01/91 and 16/01/91. At this juncture, learned advocate for the appellant has taken us through the evidence comprising of the judgment of the Reference Court in respect of the land acquired at Village Nabhoi in Land Acquisition Case No.393/1991. There also the lands were acquired for the purpose of construction of

Narmada Main Canal. Notification u/s.4 of the said Act for the said purpose was issued on 03/12/85. There the Reference Court had awarded compensation at Rs.53.60/per sq.meter. The claimants has referred the said fact in para 5 of his evidence referred to above. It seems that a copy of the said award has been produced by him at Ex.33.

15. It is required to be considered that the land involved in the said reference was situated at Village Nabhoi and the land in respect of which the present appeal has been filed is also situated at Village Nabhoi. This would show that in both the matters, the lands are situated at Village Nabhoi. Therefore, the award passed in Land Acquisition Reference Case No.393/1991 will have bearing on the facts of the case on hand. It is true that in the said reference, Notification u/s.4 of the said Act was issued on 03/12/85, whereas the Notification in the present case was issued in January, 1991 and therefore, it has to be accepted that the land covered by the said reference and award is comparable with the land, which is the subject matter in dispute in the present appeal.

16. The learned advocate for the contesting respondent has again argued that in view of the fast developments around the land in question, it would be appropriate to discard the said evidence of the earlier award fixing market price at Rs.53/- per sq.meter and therefore, the contesting respondents are entitled to enhanced amount at Rs.125/- per sq.meter as compensation. For this purpose, he has relied upon a document at Ex.32 relating to the award passed in Land Acquisition Reference Case No.315/1994 wherein the Notification u/s.4 of the said Act was issued on 17/01/91. The Reference Court had granted additional compensation of Rs.80/- per sq.meter and the total market price was fixed at Rs.87/per sq.meter for agricultural land.

17. Mr.A J Patel has also argued that the Government had preferred First Appeals No.2641/2001, 2645/2001 and 2646/2001 against the aforesaid judgment and award of the Reference Court and this Court had enhanced the market price and fixed it at Rs.150/- per sq.meter (Per : Hon'ble M/s.Justices B.C.Patel and S.D.Dave). Mr.Patel has further argued that the said matter was carried before the Hon'ble the Supreme Court by the State Government by way of S.L.Ps.No.1055/2003 to 1060/2003 and they have been dismissed by the Hon'ble the Apex Court on 21/02/03. On the strength of the above material, learned advocate for the respondents has submitted that in view

of the above position, the market price of the acquired land may be fixed on par with the price of the lands fixed in the aforesaid matter which has been set at rest by the judgment of the Hon'ble Apex Court.

18. At a first look, the above argument may be found to be good and acceptable. At the same time, it is required to be considered that the said land acquired in the said matter is not found to be in near vicinity of the land acquired in the present matter. Moreover, the said land was acquired for the purpose of construction of Adalaj Nabhoi Road. It is, therefore, clearly not abutting the land acquired for the purpose of construction of Narmada Canal and therefore, the two lands are not comparable.

19. On the other hand, it is also required to be considered that the land covered by the document Ex.33 and the land in question on hand are both situated at village Nabhoi and both the lands have been acquired for the purpose of construction of Narmada Main Canal which clearly indicates that the land covered by Ex.33 is comparable with the land acquired in the present matter.

20. At this stage, learned advocate for the contesting respondent has drawn our attention to a decision of the Hon'ble the Supreme Court rendered in Smt.Kausalya Devi Bogra V/s. Land Acquisition Officer, Aurangabad reported in AIR 1984 SC 892. He has drawn our attention in particular to head note B. It can be gathered from the said head note that the matter before the Hon'ble the Supreme Court related to an acquisition of land of Aurangabad for Medical College and Hospital. It was held, noticed and observed that Aurangabad was a place of tourist importance and it was a city industrially developing. Therefore, it was observed that the potential value of lands must be kept in view in fixing compensation. It was further held that compensation be fixed at the rate of Rs.150/- per sq.yard or Rs.7260/- per acre.

21. There is no difficulty in following the said principle. When the place is found to be speedily developing, then that would be a relevant factor for considering the market price of the property situated at that place.

22. At the same time, it is required to be considered that the Notification u/s.4 of the said Act was issued on 03/12/85 in the case of reference at Ex.33 whereas Notification u/s.4 of the said Act in the present case

was issued in January, 1991. Moreover, the contesting respondent has given evidence about the developments which took place around his land. However, it is not in evidence if the said development took place before or subsequent to the said Notification u/s.4 dated 03/12/85.

23. It is further required to be considered that the land in question is very near to the river which may naturally reduce its potentiality also. At the same time, the development has taken place at some distance. It is also evident that the development has taken place at a distance of about 2 kms. from the land involved in this appeal. This would show that because of the situation of the land in question near the riverside, development was not possible within 2 kms. of the said land which would further show that the land acquired in the present case is not on par with the land involved in Land Reference Case No.315/1994 Ex.32. On the other hand, the land in Ex.33 is more comparable with the land in respect of which the present appeal is being dealt with.

24. We are, therefore, required here to consider following evidence;

(i) Judgment of the Reference Court in L.A.R.Case No.315/1994 Ex.32 in which Notification u/s.4(1) was issued in January, 1991, Reference Court awarded compensation at Rs.87/- (Rs.80 + Rs.7) per sq.meter for agricultural land, this Court enhanced it to Rs.150/- per sq.meter against which the hon'ble the Supreme Court dismissed S.L.Ps.No.1055/2003 to 1060/2003.

(ii) Ex.33 in L.A.R.Case No.393/1991 in which Notification was issued on 03/12/85, the Reference Court awarded additional compensation at the rate of Rs.56.60/- per sq.meter in Reference Case No.393/1991.

25. There was some confusion at an initial stage on the point if the said verdict was final. Ms.Mandavia has clarified the position by showing us a copy of the judgment of this Court (Coram : Hon'ble M/s.Justices M.R.Calla and R.P.Dholakia) dated 07/04/99 rendered in First Appeals No.4539/1999 to 4545/1999. On a perusal thereof, it can be gathered that the said appeals were preferred from a group of Land Reference Cases and L.A.R.No.393/1991, referred to herein above, was one of the cases leading to the said First Appeals. It can also be gathered therefrom that Notification u/s.4(1) of the

said Act was issued in that case on 03/12/1985. The Land Acquisition Officer awarded compensation at the rate of Rs.3.50/- per sq.meter. The Reference Court enhanced the same and fixed market price of the lands acquired at the rate of Rs.56.50/- per sq.meter (Rs.53 + Rs.3.50). The matters came up here in First Appeals no.4539/1998 to 4545/1998. There this Court had an occasion to consider the question of the lands of village Nabhoi. Considering the situation of the lands of village Nabhoi and considering other instances, this Court had fixed the market price of the lands of village Nabhoi at Rs.53/per sq.meter in all. This means that this Court had fixed market value of the lands of village Nabhoi at the rate of Rs.53/- per sq.meter, which is inclusive of the price fixed by the Land Acquisition Officer.

26. The land covered by the aforesaid judgment of this Court and the land in the case on hand - both - have been acquired for one and the same purpose, i.e. construction of Narmada Main Canal. Both are very near to the river. Both are in the same line and direction and very near to one another.

27. As against this, the land covered by Ex.32 is away from the land involved in the case on hand. The said land was acquired for a different public purpose. The distance between the said land and the land in respect of the case on hand is more than the distance between the land in the case on hand and the land covered by the judgment of this Court dated 07/04/1999 rendered in First Appeal No.4539/1998. Considering the location and the situation of the land involved in this case, the land involved in Ex.33 and the land covered by the aforesaid decision of this Court and in light of the background discussed herein above, we are of a considered opinion that the land involved in the matter on hand is comparable with the land covered by the judgment of this Court rendered on 07/04/1999 in First Appeal No.4539/1998. We also record a finding that the land in respect of the case on hand is not comparable with the land covered by Ex.32. Therefore, while determining the market price of the land involved in this case, we will be required to consider the market price of the land involved in the judgment of this Court rendered on 07/04/1999 in First Appeal No.4539/1998 and six other appeals in the same group.

28. Once we find that the land involved in this appeal is comparable with the land involved in the judgment of this Court rendered on 07/04/1999 in First Appeal No.4539/1998, it is quite clear that this Court

had fixed the total market price of the land of village Nabhoi at Rs.53/- per sq.meter (inclusive of the market price of the land fixed by the Land Acquisition Officer).

29. Admittedly, Notification u/s.4(1) of the said Act was issued on 03/12/85 in respect of the land covered by the judgment in First Appeal No.4539/1998 dated 07/04/1999, whereas such a Notification was issued in respect of the land involved in the case on hand in January, 1991. This means that there was a margin of nearly five years in issuance of Notifications u/s.4(1) of the said Act in both the matters.

30. In Special Land Acquisition Officer V/s. Mohd. Hanif Sahib Bawa Sahib reported in 2002 AIR SCW 1452, it has been laid down that in absence of any comparable sale instance or evidence on capitalization method, determination of market price by taking price fixed under an old sale transaction as base value and grant of appreciation of value of land at 10% per annum for every subsequent year is neither excessive nor unreasonable.

31. Applying the above principle to the case on hand, it is clear that market price of the acquired land fixed by this Court by judgment dated 07/04/1999 in First Appeal No.4539/1998 at Rs.53/- (inclusive of market price fixed by the Land Acquisition Officer) was in respect of the land in respect of which Notification was issued u/s.4(1) of the said Act in December, 1985, whereas such a Notification was issued in January, 1991 in respect of the land involved in the present appeal in January, 1991. Looking to the difference of five years, the market price fixed at Rs.53/- per sq.meter in December, 1985, in respect of comparable lands, will be required to be proportionately increased at 10% per annum, for five years. This would go to suggest that there will be an increase at Rs.5.30/per annum which would come to Rs.26.50/- (i.e. Rs.53 - 10% = Rs.5.30 x 5 = Rs.26.50/-). If this increase of Rs.26.50/- is added in the amount of market price fixed in First Appeal No.4539/1998, i.e. Rs.53/-, then the total amount would come to Rs.79.50/-. In other words, the market price in respect of the lands involved in the case on hand is required to be fixed at the rate of Rs.79.50/- per sq.meter, which can be rounded off to Rs.80/- per sq.meter.

32. As stated herein above, the Reference Court has fixed market price of the acquired land at the rate of Rs.84.80/- per sq.meter (i.e.Rs.4.80/- per sq.meter awarded by the Spl.Land Acquisition Officer plus

Rs.80/awarded and fixed as an additional amount per sq.meter by the Reference Court - Total Rs.84.80/- per sq.meter) and since we have recorded a finding hereinabove, that the market price of the acquired land is required to be fixed at Rs.79.50/- per sq.meter (inclusive of the market price fixed by the Land Acquisition Officer) the appellants are found justified in arguing that the Reference Court has committed an error in fixing the market price in respect of the acquired land at Rs.84.80/- per sq.meter and that therefore, the amount is required to be sliced down to the extent indicated above.

33. Mr.A J Patel has again aruged at this stage that when there is a speedy development around the land acquired, then the market price of the acquired land is required to be upwardly increased and fixed accordingly.

34. There may not be any serious dispute with respect to this proposition. At the same time, it is also required to be considered that the Hon'ble the Supreme Court has rendered principle and guideline as to how this increase should be counted and calculated. In our reading of the aforesaid decision of the hon'ble the Supreme Court, the increase at 10% per annum as aforesaid, really, clearly and sufficiently takes care of the situation indicated by Mr.A J Patel, viz. speedy development around the acquired land. If there is no such development around the acquired land, then, naturally, there would not be any scope for increase in market price at 10% per annum. There is, therefore, no scope or room for any further increase in the market price of the acquired land. We have to consider that the principle and guideline regarding 10% increase per annum for each subsequent year has been laid down even in a recent decision (dated 19/03/02) by Hon'ble the Supreme Court rendered in the case of Special Land Acquisition Officer V/s. Mohd. Hanif Sahib (supra). We have gone through the said decision very carefully and on a careful reading of the said decision, we are inclined to respectfully follow the same and accordingly, hold that the respondents-claimants are entitled to the said 10% increase per annum for each year subsequent to the year December, 1985, when Notification was issued u/s.4(1) of the said Act in respect of the land involved in the judgment of this Court rendered in First Appeals No.4539/1998 dated 07/04/99.

35. Anyway, we find that the trial Court has committed an error in fixing the market price at Rs.84.80/- per sq.meter by not adopting a proper method

as indicated in 2002 AIR SCW 1452 (supra). The said error is, therefore, required to be rectified by this Court by allowing the First Appeal of the appellants. This appeal of the appellants, therefore, deserves to be allowed.

36. It may be stated here that both the respondents have filed Cross Objections registered as No.22/2003. There they claim that we should fix market price of the acquired land at the rate of Rs.125/- per sq.meter. We have heard the learned advocates for the parties on this aspect also at length. On a careful consideration to the said arguments, we are of a considered opinion that the respondents are not entitled to any increase in the market price fixed by the Reference Court but the same is required to be sliced down as indicated herein above.

37. This clearly means that the appeal of the appellants deserves to be partly allowed, reducing the total market price of acquired land from Rs.84.80/- per sq.meter to Rs.80/- per sq.meter. The Cross Objections filed by the respondents deserve to be dismissed.

38. It may, however, be clarified that the respondents will be entitled to the additional benefits indicated in Sunder V/s. Union of India reported in 2001(3) GLH 446.

39. In the result, we allow this appeal partly and direct that the respondents - claimants are entitled to get market price of their lands at the rate of Rs.80/(Rupees Eighty) per sq.meter (i.e. inclusive of the amount of market price fixed by the Land Acquisition Officer) with additional compensation u/s.23(1-A) and solatium u/s.23(2) of the said Act with interest on the additional market price of the acquired land at 9% per annum from the date of taking possession till one year and thereafter, at the rate of 15% per annum till its realization from the date of award or from the date of taking possession whichever is earlier in time. We clarify that the respondent - claimants shall be entitled to interest on the award of additional amount payable u/s.23(1-A) of the Act and on the solatium u/s.23(2) of the Land Acquisition Act. We also make it clear that the respondents shall be entitled to solatium on the additional amount of compensation u/s.23(1-A) of the Act. Appeals of the appellants are, therefore, allowed partly to the above extent.

40. Cross Objections No.22 of 2003 filed by the contesting respondents are dismissed.

41. There shall be no orders as to costs all throughout. Decree shall be drawn accordingly.

(N. G. Nandi, J.)

(D. P. Buch, J.)

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